
(1986) 02 RAJ CK 0004

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 72 of 1980

Ganga Bux and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 12-02-1986

Acts Referred:

Evidence Act, 1872 — Section 3

Penal Code, 1860 (IPC) — Section 114, 417, 419, 420, 423

Citation : (1986) 2 WLN 326

Hon'ble Judges : Gopal Kishan Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Gopal Kishan Sharma Sharma, J.—The petitioners have preferred this revision petition against the judgment of Sessions Judge, Sikar dated 21-4-1980 by which ..e confirmed the conviction of the petitioners. The Chief Judicial Magistrate, Sikar found the petitioners guilty of the offence u/s 423 IPC and sentenced to each petitioner to one year rigorous imprisonment and the fine of Rs. 500/-. Against this conviction an appeal was preferred and in the appeal, the learned Sessions Judge maintained their conviction but reduced the sentence to six months rigorous imprisonment and the fine of Rs. 250/-, in default of payment of fine to further undergo one month simple imprison- ment.

2. Heera s/o Teja who is real brother of petitioners Gana Bux and Kishana lodged a written report on 11-12-1970 and sent it to the Superinten- dent of Police, Sikar. In that complaint, he lodged that he owns two plots of land measuring 5 bighas 13, biswas and 8 bighas, 4 biswas. Their Khasra No. are 57 and 49. According to him, Ganga Bux and Kishana petitioners are on inimical terms with him and in view to cause harm and to swallow the land held by Heera got forged a sale-deed in their favour on 13-3-1979 and also got it registered with Sub-Registrar, Danta Ram Garh. He came to know of this fact when the sale-deed was produced before the Sub-Divisional Officer in case Ganga Bux v. Heera which was

decided on 21-7-1970.

3. On this complaint, the FIR No. 68/70 was registered under Sections 419, 420, 465 and 467, IPC. After usual investigation, the police submitted challan against the petitioners in the Court of Munsif and Judicial Magistrate, Sikar. The learned Magistrate framed the charge u/s 471, 419/114 and 468 IPC against the petitioners Ganga Bux and Kishana u/s 419/114 and 468 IPC against the petitioners Pokhar and Kana Ram. All the petitioners did not plead guilty and claimed trial. Then this case was transferred to the court of Chief Judicial Magistrate, Sikar who completed the trial and found the petitioners guilty of the offence u/s 423 IPC only. He acquitted the petitioners from the-charges levelled against them by the learned Magistrate. Thus, Ganga Bux and Kishana were acquitted of the offence under Sections 471, 419/114 and 468 IPC and the accused-petitioners Pokhar and Kana Ram were acquitted from the offences under Sections 419/114 and 468 IPC. Thus, aggrieved by the conviction u/s 423 IPC by both the lower courts, the petitioners have come in the revision in this Court. Shri J.P. Goyal, learned counsel for the petitioners argued that the conviction and sentence of the petitioners is based on the solitary statement of Finger-Print Expert Shri Habibul Rehman. The basis of their conviction is the opinion of Shri Habibul Rehman, Finger Print Expert. He argued that the conviction of the petitioners cannot be held on the solitary statement of the Finger Print Expert and on the basis of his opinion. There should be some independent evidence to corroborate the opinion of the Finger Print Expert as well as to corroborate his statement. In support of his argument Mr. Goyal cited the case of Gopiram and Anjandas v. The State of Rajasthan 1980 WLN 83 which is a case of Division Bench of this Court. This case of Gopiram and Anjandas v. State of Rajasthan is also u/s 417 and 471 IPC. The conviction was based on the opinion of Hand-writing Expert. It has been observed by the Hon''ble Lord- ships as under:

Having gone through the above authorities we are of the opinion that, though, the opinion of the Hand writing Expert should be received with great caution, and conviction solely on such evidence should not be based; but if there is some external or internal evidence apart from the opinion of the Handwriting Expert conviction can be based on such evidence. In a case where there is the only evidence of the Hand-writing Expert and on comparison of the disputed writings with the specimen or standard or proved writing the Court comes to its own conclusion that they are writings of the same person, conviction can be recorded, as in that case it can be said that the fact that the dispute writings are of the accused can be said to be proved within the meaning of Section 3 of the Indian Evidence Act.

4. While dealing the case of Gopiram (supra) the principle laid down by Hon''ble Supreme Court in Ram Chandra and Another Vs. State of Uttar Pradesh, and Magan Bihari Lal Vs. The State of Punjab, were relied upon.

5. In Ram Chandra and Another Vs. State of Uttar Pradesh, their Lordships of

Supreme Court has observed as follows:

It may be that normally it is not safe to treat expert evidence as to handwriting as sufficient basis for conviction. It may be, however, relied upon along with other various items of external and internal evidence relating to the documents in question.

6. In *Magan Bihari Lal v. The State of Punjab* (supra) their Lordships has observed as under:

It is now well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a handwriting expert. There is a profusion of precedential authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law. It was held by this Court in *Ram Chandra and Another Vs. State of Uttar Pradesh*, that it is unsafe to treat expert handwriting opinion as sufficient basis for conviction, but it may be relied upon when supported by other items of internal and external evidence. This Court again pointed out in *Ishwari Prasad Mishra Vs. Mohammad Isa*, that expert evidence of handwriting can never be conclusive because it is, after all, opinion evidence, and this view was reiterated in *Shashi Kumar Banerjee and Others Vs. Subodh Kumar Banerjee since deceased and after him his legal representatives and Others*, where it was pointed out by this Court that expert's evidence as to handwriting being opinion evidence can rarely, if ever, take the place of substantive evidence and before acting on such evidence, it would be desirable to consider whether it is corroborated either by clear direct evidence or by circumstantial evidence. This Court had again occasion to consider the evidentiary value of expert opinion in regard to handwriting in *Fakhruddin v. State of M.P.* AIR 1967 SC 1326 and it uttered a note of caution pointing out that it would be risky to found a conviction solely on the evidence of a handwriting expert and before acting upon such evidence, the court must always try to see whether it is corroborated by other evidence, direct or circumstantial.

7. In reply to the arguments, the learned Public Prosecutor has relied upon *Jaspal Singh Vs. State of Punjab*,

8. This case is also with regard to the thumb impression of Tej Kaur mother of the deceased on the alleged statement given before Dr. K.S. Puri and the thumb impression was sent to the expert for opinion. The thumb impression expert gave opinion that this thumb impression could not be the thumb impression of Tej Kaur.

9. In this case, their Lordships have observed as follows:

The science of identifying thumb impression is an exact science and does not admit of any mistake or doubt. The report of Dr. K.S. Puri clearly demonstrates that the thumb impression on the statement Exhibit P-B was not that of Tej Kaur but was of some other woman who appears to have falsely represented to the

Doctor that she was the mother of the deceased. This is supported not only by the fact that the thumb impression of Tej Kaur on the Statement Ex. P-B was forged but also by the categorical statement of PW 6 wherein she denied having made any such statement before the Doctor. The Doctor although examined as a witness in court was never made to identify Tej Kaur who was also one of the witnesses, nor was any application given by the accused that the Doctor should be called upon to identify Tej Kaur, PW 6 in order to test the validity of the statement that it was really Tej Kaur who made the statement Ex. P-B before the Doctor. In these circumstances, therefore, the evidence of the Doctor does not appear to be of any assistance to the defence.

10. In the present case also, the opinion of the Expert is that the thumb impression on the sale-deed are not of Heera, they are identical to the thumb impression of accused Fokhar and Kana Ram petitioners. Heera PW 10 has also stated that he has not sold the land to the petitioners Ganga Bux and Kishana and has not put his thumb impression on the sale-deed. Thus, the opinion of the thumb impression Expert is corroborated by the statement of Heera.

11. In Mohan Lal and Another Vs. Ajit Singh and Another, it has been observed as under:

A majority of finger prints found at crime scenes or on crime articles are partially smudged, and it is for the experienced and skilled fingerprint expert to say whether a mark is usable as fingerprint evidence. Similarly it is for a competent technician to examine and give his opinion whether the identity can be established, and if so whether that can be done on eight or even less identical characteristics in an appropriate case.

12. In Himachal Pradesh Administration Vs. Om Prakash, V. 59 their Lordships have observed as follows:

As long as the report of the Director of the Finger Prints Bureau shows that the opinion is based on observations which leads to a conclusion that opinion can be accepted, there is no necessity of examining the person making report. But should there be any doubt it can always be decided by the calling of the person making the report.

13. Thus, after considering law cited by both the parties, I find that the law cited by the learned counsel for the petitioners is with regard to the Hand-writing Expert. He has not cited any case law pertaining to thumb impression. Therefore, the case law cited by the learned counsel for the petitioners does not help him in the present case. In a case of Handwriting, I perfectly agree with the arguments advanced by the learned counsel for the petitioners. But before us, the case is of thumb impression and regarding thumb impression, It has been observed by the Lordships of the Supreme Court in case of Jaspal Singh (supra) that science of identifying thumb impression is an exact science and does not admit of any mistake or doubt. Hence, in the present case, the finger print expert has given his opinion which is Ex. P. 9 and in view of his opinion, the thumb impression on

the questioned sale-deed was not of Heera, According to his opinion, the disputed thumb impression were not of Heera. The disputed thumb impression marked-K is similar and identical with the left thumb impression now marked-X. He also pointed that the disputed print marked-X alleged to be of Pokar is similar and identical with his specimen left thumb impression marked SI. Thus, in the opinion of the finger print expert, the thumb impression on the alleged questioned deed are not of Heera and this opinion is corroborated by the statement of Heera who has denied to have put his thumb impression on this sale deed. Therefore, it has been proved and established that thumb impression of Heera on the alleged sale-deed are forged one. Therefore, the case of the prosecution has been established and both the learned courts below correctly held the petitioners guilty of the offence u/s 423 IPC.

14. Mr. Goyal, learned counsel for the petitioner has argued that during the trial of this case, a compromise has arrived between the petitioners Ganga Bux Kishana and Heera complainant. During the pendency of this case, Heera filed a case in the Court of Sub-Divisional Magistrate for cancelling the sale deed in question and in that case, a compromise has been filed. Heera the complainant and the petitioners Ganga Bux Kishana are real brothers and according to the compromise, they partitioned the land and 1/3 part of land has come to the share of Heera. On the basis of compromise, filed by the parties, the case which was pending before the Sub- Divisional Magistrate, was decreed and it was directed that in the Khasra Nos. 57 and 49, the parties i.e. Heera on one hand and Kishana and Ganga Bux on another hand, will have equal share. Heera will get 1/3rd as his share and Kishana and Ganga Bux will get 2/3 as their share.

15. Regarding this compromise, the learned Public Prosecutor urged that Heera in the Court statement, denied to have any compromise. I have perused the statement of Heera and the cross-examination. He has stated that he did not remember to have filed any compromise in the court of Sub- Divisional Magistrate, Sikar in the case of cancellation of registry. He further in the next breath stated that he was made to drink wine and was promised that he will be given his share and with this promise, the compromise was filed. Apart from this answer, I have perused the cross-examination of Heera also, which shows that he had not appeared in court with clean hand. For every question, he denied that he does not remember. This shows that Heera with bad intention has appeared in court and in a state- forward way did not give his statement. Therefore, I do not agree with this argument that the compromise was filed in the circumstances as stated by Heera. The compromise was arrived between the parties, they filed it before the Sub-Divisional Magistrate who verified the compromise and on the basis of compromise, he decreed the suit of Heera wherein he was given his 1/3rd share.

16. Thus, keeping in view this fact, that Heera the complainant and petitioners Ganga Bux and Kishana are real brothers. They might be having differences but the matter has been compromised and Heera has been given his 1/3rd share in

the land. Therefore, it is not justified and would be hardship if the petitioners are sent to jail back to receive the sentence awarded to them by the lower courts. After the judgment of the Additional Sessions Judge, the petitioners remained in jail for about 16 days and after the judgment of trial court remained in jail for 3 days. Thus the sentence already undergone by the petitioners is sufficient.

17. In view of my above discussions, the conviction and sentence of the petitioners u/s 423 IPC are maintained. The revision petition is therefore, dismissed, but I sentence them to the term of sentence already undergone by them. The petitioners are on bail, they need not surrender and go to jail to undergo the remaining sentence. Their bail bounds are cancelled.